IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1189 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

VALABHAI MANJIBHAI GANDHI

Versus

DEVIBAI WD/O GANDHI HARI SAVJI

Appearance:

1. Civil Revision Application No. 1189 of 2000

MR PV HATHI for Petitioner No. 1

MR YS MANKAD for Respondent No. 1-4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/07/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. P.V. Hathi for the petitioner.

Rule. Learned Advocate Mr. Y.S. Mankad waives service of rule.

1. The petitioner has challenged the order dated

27-3-2000 passed by the Civil Judge(J.D.), Bhachau, Kutch below Exh.25 in the proceedings of Civil Suit no.1 of 1999.

2. That vide impugned order, the trial Court has dismissed the application Exh.25 of the petitioner-defendant to amend the written statement Exh.17.

3. The respondents have filed the suit against the petitioner to evict the petitioner from the disputed land and earlier, the petitioner as defendant has filed written statement Exh.17. That thereafter, vide application Exh.20 some amendment was sought and the Court allowed the said amendment. Subsequently, application Exh.25 was moved contending that due to inadvertence while moving the earlier application for amendment, the defendant could not pray for substitution of two sentences as averred on page 2 of the application instead of two other sentences mentioned therein. That the trial Court vide impugned order rejected the said application holding that the defendant had failed to pray for such amendment while the prayer for earlier amendment was made and that the nature of amendment would alter the nature of the suit. It is submitted on behalf of the petitioner that in the written statement, the petitioner desired to substitute the words" Hari Savji being the administrator of the entire joint property, the document of the said property should be in the name of Gandhi Hari Savji" instead of the earlier statement contained in Exh.17 to the effect that " Gandhi Hari Savji being administrator of the entire joint property and Gandhi Manji Savji having died, the document was decided to be obtained in the name of Gandhi Hari Savji".

It is submitted that substitution of the above stated two sentences were necessary for the defendant to support the defences raised and the trial Court has rejected the amendment application on irrelevant ground.

Perusal of the impugned order itself suggests that the trial Court has failed to appreciate the prayer made by the defendant. That the substitution of the said statements could not change or alter the nature of subject matter of the suit, however, as the defendants have based their defence on the same, the said statement being necessary to support the contention raised in the written statement, and as such, rejection of application being erroneous exercise of jurisdiction, it is necessary to interfere with the impugned order.

On the basis of the foregoing discussion, the petition is allowed. The impugned order dated 27-3-2000 passed by the Civil Judge (J.D.) Bhachau, District Kutch below Exh.25 in the proceedings of Civil Suit no.1 of 1999 is hereby quashed and set aside. Rule to that extent is made absolute. No order as to costs.

(A.K.Trivedi,J.)

stanley-akt.